

**JAN 16 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON**

**U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

GREGORY McADOO,

Plaintiff - Appellant,

v.

CAL A. TERHUNE; SUSAN YEARWOOD;  
A. STONE; ROY A. CASTRO,

Defendants - Appellees.

No. 01-16997

D.C. No. CV 98-0581  
FCD/GGH

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Frank C. Damrell, District Judge, Presiding

Submitted December 3, 2002\*\*  
San Francisco, California

Before: FERGUSON, BRUNETTI, and TASHIMA, Circuit Judges.

Gregory McAdoo, a California state prisoner proceeding pro se, appeals an  
order of the district court granting summary judgment in favor of defendants,

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\* This disposition is not appropriate for publication and may not be cited to or  
by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral  
argument. See Fed. R. App. P. 34(a)(2)(C).

officials of the California Department of Corrections, in his action under 42 U.S.C. § 1983. McAdoo contends that the district court erroneously concluded that prison regulations proscribing long hair and earrings for male inmates, but not for female inmates, do not violate his equal protection rights and his First Amendment right to freedom of expression. The district court, however, erred in reaching the merits of McAdoo's case. Under the Prison Litigation Reform Act, 42 U.S.C. § 1997e (PLRA), McAdoo was required to exhaust his administrative remedies before filing suit. He did not do so until more than three months after he filed his complaint. We therefore vacate the judgment and remand the case with instructions to dismiss the action for failure to comply with the PLRA's exhaustion requirement prior to filing suit. See McKinney v. Carey, 311 F.3d 1198 (9th Cir. 2002) (holding that, under the PLRA, the district court "must dismiss an action involving prison conditions when the plaintiff did not exhaust his administrative remedies prior to filing suit but is in the process of doing so when a motion to dismiss is filed").

The judgment of the district court is therefore vacated and the case remanded with directions to dismiss the action without prejudice.

**VACATED and REMANDED.**